

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES VINCENT ADAMS,

Petitioner,

v.

JEFFERY UTTECHT,

Respondent.

NO: 12-CV-0349-TOR

ORDER DISMISSING PETITION AS  
TIME-BARRED

BEFORE THE COURT is Petitioner's Response to the Order to Show Cause why this action should not be dismissed as time-barred under 28 U.S.C. § 2244(d). Petitioner James Vincent Adams, a prisoner at the Coyote Ridge Corrections Center, is proceeding *pro se*; Respondent has not been served. Petitioner challenges a prison disciplinary action which resulted in the loss of 135 days good conduct time on February 4, 2008.

Mr. Adams has clarified that he appealed the disciplinary decision and according to Appendix B, ECF No. 11 at pg. 25, the Superintendent's Designee affirmed the disciplinary decision on February 28, 2008. Petitioner contends that,

ORDER DISMISSING PETITION AS TIME-BARRED -- 1

1 under state law, he had until February 26, 2009, to file a Personal Restraint Petition  
2 (PRP). He indicates that he did not file his PRP, a post-conviction collateral  
3 attack, until two days prior to that deadline, presumably on February 24, 2009.

4 An inmate must seek federal habeas relief within one year after "the date on  
5 which the factual predicate of the claim or claims presented could have been  
6 discovered through the exercise of due diligence." 28 U.S.C. § 2244(d)(1) (D). As  
7 stated above, Petitioner's administrative appeal became final on February 28, 2008.  
8 *See Redd v. McGrath*, 343 F.3d 1077, 1080–83 (9th Cir.2003) (holding that §  
9 2244(d)(1)(D) applies where a prison administrative decision is challenged, and is  
10 triggered by the exhaustion of administrative remedies). Consequently, the federal  
11 limitations period began to run on February 29, 2008. *See Patterson v. Stewart*,  
12 251 F.3d 1243, 1244-46 (9th Cir. 2001).

13 The federal limitations period was not statutorily tolled until Petitioner filed  
14 his PRP on February 24, 2009. Therefore, Petitioner had only three days  
15 remaining in the federal limitations period to file a habeas petition after the  
16 Washington State Supreme Court issued its decision regarding the PRP on April  
17 27, 2011.

18 Petitioner's arguments regarding the issuance of a Certificate of Finality are  
19 irrelevant. When Mr. Adams timely, though not expeditiously, filed his PRP on  
20 February 24, 2009, 362 days of the federal limitations period had already expired.

1 The federal limitations period resumed when the state appellate court concluded  
2 review of the PRP, and fully expired three days thereafter. Thus, even if  
3 Petitioner's arguments had merit, the federal habeas petition, filed 365 days after  
4 May 9, 2011, is untimely under 28 U.S.C. § 2244(d). Petitioner presents no basis  
5 to equitably toll the running of the federal limitations period.

6 Therefore, for the reasons set forth in the Order to Show Cause, ECF No. 7,  
7 and based on Petitioner's clarification and documentation regarding the disciplinary  
8 action, **IT IS ORDERED** the Petition is **DISMISSED with prejudice** as time-  
9 barred under 28 U.S.C. § 2244(d).

10 **IT IS SO ORDERED.** The District Court Executive shall enter this Order,  
11 forward copies to Petitioner and **CLOSE** the file. The Court further certifies that  
12 pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken  
13 in good faith, and there is no basis upon which to issue a certificate of  
14 appealability. 28 U.S.C. § 2253(c); Fed. R.App. P. 22(b).

15 **DATED** this 6th day of September, 2012.

16  
17 *s/ Thomas O. Rice*  
18 THOMAS O. RICE  
19 United States District Court Judge  
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